

MFP ITEM 1  
July 11, 1996

**MEMORANDUM**

TO: Management and Fiscal Policy Committee

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession:** Emergency Bill 21-96, Collective Bargaining - Firefighters

Emergency Bill 21-96, Collective Bargaining - Firefighters, sponsored by the Council President at the request of the County Executive, was introduced on May 14. A public hearing was held on July 2, at which the only speakers were James Torgesen, County Labor/Employee Relations Manager, and John Sparks, President, Local 1664, Montgomery County Career Firefighters Association, who both urged enactment of Bill 21-96 with certain amendments.

Emergency Bill 21-96 implements Section 510A of the County Charter, approved by the voters in 1994. This bill establishes a separate collective bargaining framework for nonsupervisory professional fire and rescue employees, provides for the selection of a separate Labor Relations Administrator for the Fire/Rescue unit, and allows binding arbitration of bargaining disputes. The form of binding arbitration is last best offer for the entire contract ("total package"), as in the police collective bargaining unit, rather than last best offer issue-by-issue ("line item") or conventional (arbitrator's discretion or "split the difference") arbitration. Generally the impasse procedure in this bill is modeled on the police bargaining law, while the matters subject to bargaining and not subject to bargaining ("employer rights") are modeled on the County employees bargaining law.

Staff agrees that all except one of the amendments jointly proposed by Mr. Torgesen and Mr. Sparks (see ©34-35) are appropriate and recommends that the Committee adopt them. The exception is item 7, where staff is continuing to discuss the language with Mr. Torgesen.

Several issues that are not unique to this bargaining unit have been mentioned. These include potential changes in the law to clarify the extent to which retiree health and life insurance benefits are bargainable; to modify the timetable for collective bargaining and Council review of collective bargaining agreements; to require that all legislation and regulations necessary to implement a collective bargaining agreement be submitted to the Council with the agreement; and to require each collective bargaining agreement to show all changes from the previous agreement by brackets and underlines. Staff recommends that, to preserve consistency and

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uniformity in the County collective bargaining laws, these issues be considered for all bargaining units in one bill, rather than implemented in piecemeal fashion, unit by unit.

This packet contains:

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Emergency Bill No. 21-96  
Concerning: Collective Bargaining -  
Firefighters  
Revised: 5-10-96 Draft No. 3  
Introduced: May 14, 1996  
Expires: November 14, 1997  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the request of the County Executive

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**AN EMERGENCY ACT** to establish a separate collective bargaining process for professional fire and rescue employees.

By amending

Montgomery County Code  
Chapter 33, Personnel  
Sections 33-102 and 33-105

By adding

Chapter 33, Personnel  
Article X, Fire and Rescue Collective Bargaining  
Sections 33-147 through 33-157

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland, approves the following Act:*

1       **Sec. 1. Sections 33-102 and 33-105 are amended, and Article X, Fire**  
2       **and Rescue Collective Bargaining, Sections 33-147 through 33-157, are added**  
3       **as follows:**

4       **33-102. Definitions.**

5       The following terms have the meaning indicated when used in this Article:

6                               \*    \*    \*

7       (4)   **Employee** means any person who works under the County  
8           government merit system on a continuous full-time, career or part-  
9           time, career basis, except [for the following]:

10       [a.]   (A)   Confidential aides to elected officials.

11       [b.]   (B)   All persons who are not covered by the County government  
12           merit system.

13       [c.]   (C)   Heads of principal departments, offices, and agencies.

14       [d.]   (D)   Deputies and assistants to heads of principal departments,  
15           offices, and agencies.

16       [e.]   (E)   Persons who provide direct staff or administrative support to  
17           the head of a principal department, office, or agency, or to a  
18           deputy or assistant within the immediate office of a head of a  
19           principal department, office, or agency.

20       [f.]   (F)   Persons who report directly to or whose immediate supervisor  
21           is the County Executive or the Chief Administrative Officer or  
22           their principal aides.

23       [g.]   (G)   Persons who work for the Office of the County Executive and  
24           the Office of the Chief Administrative Officer.

25       [h.]   (H)   Persons who work for the County Council.

- 26 [i.] (I) Persons who work for the Office of the County Attorney.
- 27 [j.] (J) Persons who work for the Office of Management and Budget.
- 28 [k.] (K) Persons who work for the [personnel office] Office of Human
- 29 Resources.
- 30 [l.] (L) Persons who work for the Merit System Protection Board.
- 31 [m.] (M) Persons who work on a temporary, seasonal, or substitute basis.
- 32 [n.] (N) Newly hired persons on probationary status.
- 33 [o.] (O) Persons who work for the Police Department [who] and are
- 34 represented by a certified employee organization under Article
- 35 V [of this Chapter].
- 36 (P) Persons who work for the Department of Fire and Rescue
- 37 Services and are represented by a certified employee
- 38 organization under Article X.
- 39 [p.] (Q) Officers in the uniformed services (Corrections, Fire and
- 40 Rescue, Police, Office of the Sheriff) in the rank of sergeant
- 41 and above. Subject to any limitations in state law, deputy
- 42 sheriffs below the rank of sergeant are employees.
- 43 [q.] (R) Persons who are members of the state merit system.
- 44 [r.] (S) Supervisors, which means persons having authority to [do any
- 45 of the following]:
- 46 [1.](i) hire, assign, transfer, lay off, recall, promote, evaluate,
- 47 reward, discipline, suspend, or discharge employees, or
- 48 effectively [to] recommend any [one] of these actions;
- 49 [2.](ii) direct the activity of [three (3)] 3 or more employees; or
- 50 [3.](iii) adjust or recommend adjustment of grievances.

[s.] (T) Persons in grade 27 or above, whether or not they are supervisors.

**33-105. Units for collective bargaining.**

(a) There are [3] 2 units for collective bargaining and for purposes of certification and decertification. Persons in these units are all County government merit system employees working on a continuous full-time, career or part-time, career basis, [excluding the categories listed as exceptions to the definition of] except any person who is not defined as an employee in Section 33-102(4) [of this Article]. The employees are divided into [3] 2 units[, in accordance with the following descriptions]:

\* \* \*

[(3) **Fire/Rescue unit.** This unit is composed of employees who hold the positions of master firefighter/rescuer, and firefighter/rescuer I, II, and III, and who are associated with fire suppression, fire protection, fire communications, fire service training, rescue, and emergency medical services. These duties include the rescue and safety of individuals and the preservation of structures and physical property.]

\* \* \*

**ARTICLE X. FIRE AND RESCUE COLLECTIVE BARGAINING.**

**33-147. Declaration of policy.**

The public policy of Montgomery County is to promote a harmonious, peaceful, and cooperative relationship between the County government and its fire and rescue employees and to protect the public by assuring, at all times, the responsive, orderly, and efficient operation of the Department of Fire and Rescue



Services. Since unresolved disputes in the fire and rescue service harm the public and fire and rescue employees, adequate means should be available to prevent disputes and resolve them when they occur. To that end, it is in the public interest that fire and rescue employees have the opportunity to bargain collectively over wages, hours, and other terms and conditions of employment, through a representative of their choice, or to refrain from collective bargaining. It is also in the public interest that the County government and a representative of fire and rescue employees bargain collectively in good faith without interference with the orderly process of government, and that they implement any agreement reached through collective bargaining.

Fire and rescue employee organizations and the County government each possess substantial means for initiating actions on wages, hours, and working conditions of employees. Therefore, in order to preserve an appropriate balance between labor and management in the fire and rescue service, once the employees voluntarily select a representative collective bargaining must be used in place of, and not in addition to, existing means to initiate government action on subjects that are appropriate for collective bargaining under this Article.

### **33-148. Definitions.**

The following terms have the meaning indicated when used in this Article:

- (1) **Agency shop** means a provision in a collective bargaining agreement requiring, as a condition of continued employment, that bargaining unit employees pay a service fee not greater than the monthly membership dues uniformly and regularly required by the employee organization of all of its members. An agency shop agreement must not require an employee to pay initiation fees, assessments, fines, or any similar collections as a condition of continued employment. A

collective bargaining agreement must not require payment of a service fee by any employee who opposes joining or financially supporting an employee organization on religious grounds. However, the collective bargaining agreement may require that employee to pay an amount equal to the service fee to a nonreligious, nonunion charity, or to any other charitable organization, agreed to by the employee and the certified representative, with provision for dispute resolution if there is not agreement, and to give to the employer and the certified representative written proof of this payment. The certified representative must adhere at all times to all federal constitutional requirements in its administration of any agency shop system maintained by it.

(2) **Certified representative** means an employee organization chosen to represent the unit as the exclusive bargaining agent in accordance with this Article or Article VII.

(3) **Collective bargaining** means meeting at reasonable times and places and negotiating in good faith on appropriate subjects as defined under this Article. This Article does not compel either party to agree to a proposal or make a concession.

(4) **Employee** means any fire and rescue employee in the classification of Master Firefighter/Rescuer, Firefighter/Rescuer III, Firefighter/Rescuer II, and Firefighter/Rescuer I, but not any employee:

(A) in a probationary status, or

(B) in the classification of Fire/Rescue Sergeant or any equivalent or higher classification.

- 129       (5)   **Employee organization** means any organization that admits  
130           employees to membership and that has as a primary purpose the  
131           representation of employees in collective bargaining. The  
132           organization must not admit to membership any person other than fire  
133           and rescue service personnel.
- 134       (6)   **Employer** means the County Executive and the Executive's designee.
- 135       (7)   **Lockout** means any action that the employer takes to interrupt or  
136           prevent the continuity of work properly and usually performed by the  
137           employees for the purpose and with the intent of either coercing the  
138           employees into relinquishing rights guaranteed by this Article or of  
139           bringing economic pressure on employees for the purpose of securing  
140           the agreement of their certified representative to certain collective  
141           bargaining terms.
- 142       (8)   **Mediation** means an effort by an impasse neutral chosen under this  
143           Article to assist confidentially in resolving, through interpretation,  
144           suggestion, and advice, a dispute arising out of collective bargaining  
145           between the employer and the certified representative.
- 146       (9)   **Strike** means a concerted failure to report for duty, absence, stoppage  
147           of work, or abstinence in whole or in part from the full and faithful  
148           performance of the duties of employment with the employer, or  
149           deviation from normal or proper work duties or activities, where any  
150           of these acts are done in a concerted manner for the purpose of  
151           inducing, influencing, or coercing the employer in the determination,  
152           implementation, interpretation, or administration of terms or  
153           conditions of employment or of the rights, privileges, or obligations

of employment or of the status, recognition, or authority of the  
employee or an employee organization.

- (10) Unit means all employees, as defined in this Section, who are  
associated with fire suppression, fire protection, fire communications,  
fire service training, rescue, and emergency medical services, and  
whose duties include the rescue and safety of individuals and the  
preservation of structures and physical property.

**33-149. Labor Relations Administrator.**

- (a) A Labor Relations Administrator must be appointed to effectively  
administer this Article as it governs selection, certification and  
decertification procedures, prohibited practices, and the choice of an  
impasse neutral. The Administrator must:

- (1) periodically adopt, amend, and repeal, under method (1),  
regulations and procedures to carry out the Administrator's  
duties under this Article;
- (2) request from the employer or employee organization, and the  
employer or employee organization may at its discretion  
provide, any relevant assistance, service, and data that will  
enable the Administrator to properly carry out duties under this  
Article;
- (3) hold hearings and make inquiries, administer oaths and  
affirmations, examine witnesses and documents, take testimony  
and receive evidence, and compel by issuance of subpoenas the  
attendance of witnesses and the production of relevant  
documents;

- 179           (4)   conduct elections to certify or decertify an **employee**  
 180                 **organization** under this Article, and issue the certification or  
 181                 decertification;
- 182           (5)   investigate and attempt to resolve or settle, as provided in this  
 183                 Article, charges of engaging in prohibited practices, but the  
 184                 Administrator must defer to the parties' grievance procedure if:
- 185                 (A)   the **employer** and the **certified representative** have  
 186                       negotiated a valid grievance procedure to resolve  
 187                       disputes, and
- 188                 (B)   deferral to the grievance procedure would not result in  
 189                       the application of principles repugnant to this Article;
- 190           (6)   determine whether a person is properly included in or excluded  
 191                 from the **unit**;
- 192           (7)   obtain any necessary support services and make necessary  
 193                 expenditures in the performance of duties to the extent the  
 194                 County has appropriated funds for these purposes; and
- 195           (8)   exercise any other powers and perform any other duties and  
 196                 functions specified in this Article.
- 197       (b)   The Labor Relations Administrator must be a person with experience  
 198               as a **neutral** in labor relations, and must not be a person who, because  
 199               of vocation, employment, or affiliation, can be classed as a  
 200               representative of the interest of the **employer** or any **employee**  
 201               **organization**.
- 202       (c)   The County Executive must appoint the Labor Relations  
 203               Administrator from a list of 5 nominees agreed on by the **certified**  
 204               **representative** and the Chief Administrative Officer. The County

Council must confirm the appointment. If there is no **certified**  
**representative**, the County Executive must appoint an Administrator,  
with the confirmation of the County Council. If the County Council  
does not confirm an appointment, the County Executive must appoint  
another person from a new agreed list of 5 nominees and submit that  
appointee to the County Council for confirmation. The Administrator  
serves a term of 5 years. An incumbent Administrator is  
automatically reappointed for another 5-year term unless, during the  
period between 60 and 30 days before the term expires, the **certified**  
**representative** notifies the **employer** or the **employer** notifies the  
**certified representative** that it objects to the reappointment.

- (d) The Labor Relations Administrator must be paid a daily fee as  
specified by contract with the County, and must be reimbursed for  
necessary expenses incurred in performing the duties of  
Administrator.

### 33-150. Employee rights.

- (a) **Employees** have the right to:
- (1) form, join, support, contribute to, or participate in, or refrain  
from forming, joining, supporting, contributing to, or  
participating in, any **employee organization** or its lawful  
activities; and
  - (2) be represented fairly by their **certified representative**, if any.
- (b) The **employer** must extend to the **certified representative** the  
exclusive right to represent the **employees** for the purposes of  
**collective bargaining**, including the orderly processing and  
settlement of grievances as agreed by the parties under this Article.

(c) A **certified representative** serves as the exclusive bargaining agent for all **employees in the unit** and must represent fairly and without discrimination all **employees in the unit** without regard to whether the **employees** are members of the **employee organization**, pay dues or other contributions to it, or participate in its affairs. However, it is not a violation of this duty for a **certified representative** to seek enforcement of an **agency shop** provision in a valid **collective bargaining** agreement.

(d) The right of a **certified representative** to receive voluntary dues or service fee deductions or **agency shop** provisions must be determined through negotiations, unless the authority to negotiate these provisions has been suspended under this Article. Other than an **agency shop** provision, a **collective bargaining** agreement must not require membership in, participation in the affairs of, or contributions to an **employee organization**.

### **33-151. Selection, certification, and decertification procedures.**

(a) Any **employee organization** seeking certification as representative of the **unit** must file a petition with the Labor Relations Administrator stating its name, address, and its desire to be certified. The **employee organization** must also send a copy of the petition, including a copy of the signatures of the supporting **employees** on the petition, to the **employer**. The petition must contain the uncoerced signatures of 30 percent of the **employees in the unit**, signifying their desire to be represented by the **employee organization** for purposes of **collective bargaining**.

- (b) If an **employee organization** has been certified, an **employee** in the unit may file a petition with the Administrator to decertify the certified representative. The **employee** must also send a copy of the petition to the **employer** and the **certified representative**, not including the names of the supporting **employees**. The petition must contain the uncoerced signatures of 30 percent of the **employees** in the unit, alleging that the certified **employee organization** is no longer the choice of the majority of the **employees** in the unit.
- (c) If a lawful **collective bargaining** agreement is not in effect, a petition may be filed under this Section in September of any year, but not sooner than 22 months after an election held under this Section.
- (d) If a lawful **collective bargaining** agreement is in effect, a petition filed under this Section must not be entertained unless it is filed during September of the final year of the agreement.
- (e) If the Administrator finds that a petition is properly supported and timely filed, the Administrator must hold an election of all eligible **employees** within a reasonable time, but no later than the next October 20, to determine if and by whom the **employees** wish to be represented.
- (1) The election must be supervised by the Administrator and must be conducted by secret ballot at the time and place that the Administrator directs. The Administrator may retain the services of a State agency responsible for conducting labor elections, or a similarly neutral body, to assist in conducting the election.



- 281           (2)   The election ballots must contain, as choices to be made by the  
282                   voter, the name of each petitioning or certified **employee**  
283                   **organization**, the name of any other **employee organization**  
284                   showing written proof at least 10 days before the election of at  
285                   least 10 percent representation of the **employees** in the **unit** in  
286                   the same manner as described in paragraph (a), and a choice  
287                   that the **employee** does not desire to be represented by any of  
288                   the named **employee organizations**.
- 289           (3)   The **employer** and each party to the election may be  
290                   represented by observers selected under conditions that the  
291                   Administrator prescribes.
- 292           (4)   Observers selected under paragraph (3) may challenge for good  
293                   cause the eligibility of any person to vote in the election. All  
294                   challenged ballots must be impounded until either the parties  
295                   agree on the validity of each challenge or the Administrator  
296                   decides the validity of each challenge. However, if the number  
297                   of challenges will not determine the outcome of the election,  
298                   the challenged ballots must be destroyed.
- 299           (5)   After the polls have been closed, the Administrator must count  
300                   all valid ballots cast in the presence of the observers.
- 301           (6)   The Administrator must immediately prepare and serve on the  
302                   **employer** and each party a report certifying the results of the  
303                   election. If an **employee organization** receives the votes of a  
304                   majority of the **employees** who voted, the Administrator must  
305                   certify that **organization** as the exclusive agent.

(7) If no **employee organization** receives the votes of a majority of the **employees** who voted, the Administrator must not certify a representative. Unless a majority of the **employees** who vote choose ``no representative," a runoff election must be conducted. The runoff election must contain the 2 choices that received the largest and second largest number of votes in the original election.

(f) The Administrator's certification of results is final unless, within 7 days after service of the report and the certification, any party serves on all other parties and files with the Administrator objections to the election. All objections must be verified and contain a concise statement of facts constituting the grounds for each objection. The Administrator must investigate all objections and, if substantial factual issues exist, must hold a hearing. Otherwise, the Administrator may decide the matter without a hearing. The Administrator may invite, either by rule or by invitation, written or oral argument to assist in deciding the merits of the objections. If the Administrator finds that the election was conducted in substantial conformity with this Article, the Administrator must confirm the certification initially issued. If the Administrator finds that the election was not held in substantial conformity with this Article, then the Administrator must hold another election under this Section.

(g) The County must pay the cost of conducting each election.

**33-152. Collective bargaining.**

- (a) **Duty to bargain; matters subject to bargaining.** When an **employee organization** is certified, the **employer** and the **certified representative** must bargain collectively with respect to:
- (1) salary and wages, including the percentage of the increase in the salary and wages budget that is devoted to merit increments and cash awards, but salaries and wages must be uniform for all employees in the same classification;
  - (2) pension and other retirement benefits for active employees only;
  - (3) employee benefits such as, but not limited to, insurance, leave, holidays, and vacations;
  - (4) hours and working conditions;
  - (5) procedures for the orderly processing and settlement of grievances concerning the interpretation and implementation of any collective bargaining agreement, which may include:
    - (A) binding third party arbitration, but the arbitrator has no authority to amend, add to, or subtract from any provision of the collective bargaining agreement; and
    - (B) provisions for exclusivity of forum;
  - (6) matters affecting the health and safety of employees; and
  - (7) amelioration of the effect on employees when the exercise of employer rights listed in subsection (b) causes a loss of existing jobs in the unit.
- (b) **Employer rights.** This article and any **collective bargaining agreement** made under it must not impair the right and responsibility of the **employer** to:

- 356           (1) determine the overall budget and mission of the **employer** and  
357               any agency of County government;
- 358           (2) maintain and improve the efficiency and effectiveness of  
359               operations;
- 360           (3) determine the services to be rendered and the operations to be  
361               performed;
- 362           (4) determine the overall organizational structure, methods,  
363               processes, means, job classifications, and personnel by which  
364               operations are conducted, and the location of facilities;
- 365           (5) direct and supervise **employees**;
- 366           (6) hire, select, and establish the standards governing promotion of  
367               **employees**, and classify positions;
- 368           (7) relieve **employees** from duties because of lack of work or  
369               funds, or when the **employer** determines continued work  
370               would be inefficient or nonproductive;
- 371           (8) take actions to carry out the mission of government in  
372               emergency situations;
- 373           (9) transfer, assign, and schedule **employees**;
- 374           (10) determine the size, grades, and composition of the work force;
- 375           (11) set standards of productivity and technology;
- 376           (12) establish **employee** performance standards and evaluate  
377               **employees**, but evaluation procedures are subject to  
378               bargaining;
- 379           (13) make and implement systems for awarding outstanding service  
380               increments, extraordinary performance awards, and other merit  
381               awards;

- 382           (14) introduce new or improved technology, research, development,  
 383                 and services;
- 384           (15) control and regulate the use of machinery, equipment, and  
 385                 other property and facilities of the **employer**, subject to  
 386                 subsection (a)(6);
- 387           (16) maintain internal security standards;
- 388           (17) create, alter, combine, contract out, or abolish any job  
 389                 classification, department, operation, **unit**, or other division or  
 390                 service, but the **employer** must not contract work which will  
 391                 displace **employees** unless it gives written notice to the  
 392                 **certified representative** 90 days before signing the contract or  
 393                 other notice agreed by the parties;
- 394           (18) suspend, discharge, or otherwise discipline **employees** for  
 395                 cause, except that, subject to Charter Section 404, any such  
 396                 action may be subject to a grievance procedure included in a  
 397                 **collective bargaining** agreement; and
- 398           (19) issue and enforce rules, policies, and regulations necessary to  
 399                 carry out these and all other managerial functions which are not  
 400                 inconsistent with this Article, federal or state law, or the terms  
 401                 of a **collective bargaining** agreement.

402       (c) **Exemption.** This Article does not limit the discretion of the  
 403           **employer** voluntarily to discuss with the representatives of its  
 404           **employees** any matter concerning the **employer's** exercise of any  
 405           right specified in this Section. However, any matter so discussed is  
 406           not subject to bargaining.

- (d) The public **employer** rights specified in this Section must be incorporated by reference in every agreement reached between the employer and the employee organization.

**33-153. Bargaining, impasse, and legislative procedures.**

- (a) Collective bargaining must begin no later than the November 1 before the beginning of a fiscal year for which there is no agreement between the **employer** and the **certified representative**, and must be completed on or before January 15. The resolution of a bargaining impasse must be completed by February 1. These time limits may be waived or extended by written agreement of the parties.
- (b) Any provision for automatic renewal or extension of a **collective bargaining** agreement is void. An agreement is void if it extends for less than 1 year or more than 3 years. Each **collective bargaining** agreement must take effect July 1 and end June 30.
- (c) A **collective bargaining** agreement takes effect only after ratification by the **employer** and the **certified representative**. The **certified representative** may adopt its own ratification procedures.
- (d) Before November 10 of any year in which the **employer** and the **certified representative** bargain collectively, they must choose an impasse neutral, either by agreement or through the processes of the American Arbitration Association. The impasse neutral must be available from January 15 to February 1. The impasse neutral's fees and expenses must be shared equally by the **employer** and the **certified representative**.
- (e) During the course of **collective bargaining**, either party may declare an impasse and request the services of the impasse neutral, or the

parties may jointly request those services before declaring an impasse. If the parties have not agreed on a **collective bargaining** agreement by January 15, an impasse exists by operation of law.

(f) When an impasse is reached, the parties must submit the dispute to the impasse neutral. The impasse neutral must attempt **mediation** by bringing the parties together voluntarily under conditions that will tend to bring about a settlement of the dispute.

(g) If the impasse neutral, in the impasse neutral's sole discretion, finds that the parties are at a bona fide impasse, the impasse neutral must require the parties to jointly submit all items previously agreed on, and each party to submit a final offer consisting of proposals not agreed upon. Neither party may change any proposal after it is submitted to the impasse neutral as a final offer, except to withdraw a proposal on which the parties have agreed.

(h) The impasse neutral may require the parties to submit evidence or present oral or written arguments in support of their proposals. The impasse neutral may hold a hearing at a time, date, and place selected by the impasse neutral. The hearing must not be open to the public.

(i) On or before February 1, unless that date is extended by written agreement of the parties, the impasse neutral must select the final offer that, as a whole, the impasse neutral judges to be the more reasonable. In determining which final offer is the more reasonable, the impasse neutral may consider only the following factors:

- (1) past **collective bargaining** agreements between the parties, including the past bargaining history that led to the agreements,

or the pre-collective bargaining history of employee wages, hours, benefits, and working conditions;

(2) wages, hours, benefits and conditions of employment of similar employees of other public employers in the Washington Metropolitan Area and in Maryland;

(3) wages, hours, benefits, and conditions of employment of other Montgomery County employees;

(4) wages, benefits, hours, and other working conditions of similar employees of private employers in Montgomery County;

(5) the interest and welfare of the public; and

(6) the ability of the employer to finance economic adjustments, and the effect of those adjustments on the normal standard of public services provided by the employer.

(j) The impasse neutral must base the selection of the most reasonable offer on the contents of the offer and the integration of any previously agreed-on items with the disputed items. In making a decision, the impasse neutral must not consider or receive any evidence or argument concerning offers of settlement not contained in the offers submitted to the impasse neutral, or any other information concerning the collective bargaining leading to impasse. The impasse neutral must neither compromise nor alter the final offer that he or she selects.

(k) The final offer selected by the impasse neutral, integrated with any items previously agreed on, is the final agreement between the parties, need not be ratified by any party, and has the force and effect



of an agreement voluntarily entered into and ratified under subsection (c). The parties must execute that agreement.

(l) The annual operating budget which the **employer** submits to the County Council must include sufficient funds to pay for the items in the parties' final agreement. Either or both parties must expressly identify to the Council all terms and conditions in the agreement that require an appropriation of funds or the enactment, repeal, or modification of any County law or regulation, or which have or may have a present or future fiscal impact. The **employer** must make a good faith effort to have the Council take action to implement all terms and conditions in the final agreement.

(m) The Council may hold a public hearing to enable the parties and the public to testify on the agreement.

(n) The Council may accept or reject all or part of any term or condition in the agreement which requires an appropriation of funds or the enactment, repeal, or modification of any County law or regulation, or which has or may have a present or future fiscal impact. On or before May 1, the Council must indicate by resolution its intention to appropriate funds for or otherwise implement the agreement or its intention not to do so, and must state its reasons for any intention to reject any part of the final agreement.

(o) If the Council indicates its intention to reject any part of the final agreement, it must select a representative to meet with the parties and present the Council's views in the parties' further negotiation on matters that the Council has indicated its intention to reject. This representative must also participate fully in stating the Council's

position in any ensuing impasse procedure. The parties must submit the results of the negotiation, whether a complete or a partial agreement, to the Council on or before May 10. Any agreement must provide for automatic reduction or elimination of wage or benefits adjustments if:

- (1) the Council does not take action necessary to implement the agreement or a part of it; or
- (2) sufficient funds are not appropriated for any fiscal year when the agreement is in effect.

### **33-154. Prohibited practices.**

(a) The **employer** and its agents or representatives must not:

- (1) interfere with, restrain, or coerce **employees** in the exercise of any rights granted to them under this Article;
- (2) dominate or interfere with the formation or administration of any **employee organization** or contribute financial or other support to it, under an agreement or otherwise, but the **employer** and **certified representative** may agree to and apply an **agency shop** provision under this Article and a voluntary dues or service fee deduction provision, and may agree to reasonable use of County facilities to communicate with **employees**;
- (3) encourage or discourage membership in any **employee organization** by discriminating in hiring, tenure, wages, hours, or conditions of employment, but this Article does not preclude an agreement from containing an **agency shop** provision;

(4) discharge or discriminate against a public **employee** because the **employee** files charges, gives testimony, or otherwise lawfully aids in administering this Article;

(5) refuse to bargain collectively with the **certified representative**;

(6) refuse to reduce to writing or sign a **collective bargaining agreement** that has been agreed to in all respects;

(7) refuse to process or arbitrate a grievance if required under a grievance procedure contained in a **collective bargaining agreement**;

(8) directly or indirectly oppose the appropriation of funds or the enactment of legislation by the County Council to implement an agreement reached under this Article; or

(9) engage in a **lockout** of **employees**.

(b) **Employee organizations** and their agents, representatives, and persons who work for them, must not:

(1) interfere with, restrain, or coerce the **employer** or any **employee** in the exercise of any rights granted under this Article;

(2) restrain, coerce, or interfere with the **employer** in the selection of its representative for **collective bargaining** or the adjustment of grievances;

(3) refuse to bargain collectively with the **employer** if the **employee organization** is the **certified representative**;

(4) refuse to reduce to writing or sign a **collective bargaining agreement** which has been agreed to in all respects;

(5) hinder or prevent, by threats of violence, intimidation, force, or coercion of any kind, the pursuit of any lawful work or employment by any person, public or private, or obstruct or otherwise unlawfully interfere with the entrance to or exit from any place of employment, or obstruct or unlawfully interfere with any person's free and uninterrupted use of any road, railway, airport, or other mode of travel;

(6) hinder or prevent by threats, intimidation, force, coercion, or sabotage, the obtaining, use, or disposition of materials, supplies, equipment, or services by the employer;

(7) take or retain unauthorized possession of property of the employer, or refuse to do work or use certain goods or materials as lawfully required by the employer; or

(8) cause or attempt to cause the employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are neither performed nor to be performed.

(c) A charge of prohibited practice may be filed by the employer, an employee organization, or any individual employee. Each charge must be filed with the Labor Relations Administrator, and a copy must be sent to any person who allegedly committed a prohibited practice. Each charge must state facts sufficient to allow the Administrator to investigate the charge. The Administrator may request withdrawal of and, if necessary, summarily dismiss any charge which is insufficiently supported in fact or law to warrant a hearing.

- (d) The Administrator may independently investigate any charge and may adopt rules for an independent investigation. If, after investigating, the Administrator finds that a charge is sufficiently supported to raise an issue of fact or law and is unable to settle or resolve the matter, the Administrator must hold a hearing on the charge after notifying the parties. In any hearing, the charging party must present evidence in support of the charges; and the party or parties charged may file an answer, appear in person or otherwise, and present evidence in defense against the charges.
- (e) If the Administrator finds that the person charged has committed a prohibited practice, the Administrator must file findings of fact and conclusions of law, may order the person charged to cease and desist from the prohibited practice, and may take affirmative actions to remedy any violation of this Article. Remedies available under this subsection include reinstating **employees** with or without back pay, making **employees** whole for any loss relating to County employment suffered as a result of any prohibited practice, or withdrawing or suspending an **employee organization's** authority to negotiate or continue an **agency shop** provision or a voluntary dues or service fee deduction provision. If the Administrator finds that the party charged has not committed a prohibited practice, the Administrator must file findings of fact and conclusions of law and dismiss the charges.
- (f) The Administrator must summarily dismiss any charge based on an action which allegedly occurred more than 6 months before the charge was filed.

(g) Any party aggrieved by a final decision of the Administrator under this Section may appeal the decision to the Circuit Court for Montgomery County in accordance with the court rules governing administrative appeals. The court may affirm, reverse, or modify the decision, or remand the case for further proceedings. The filing of an appeal does not stay the Administrator's order. Any party to the proceeding in the Circuit Court may appeal the Court's decision under applicable provisions of state law and court rules.

**33-155. Expression of views.**

(a) Expressing or disseminating any views, argument, or opinion, orally, in writing, or otherwise:

(1) is not a prohibited practice or evidence of a prohibited practice under this Article; and

(2) is not grounds to invalidate any election conducted under this Article;

unless the expression or dissemination contains a threat of reprisal or promise of benefit.

(b) Recognizing an **employee organization** does not preclude the County from dealing with religious, social, fraternal, professional, or other lawful associations with respect to matters or policies that involve individual members of those associations or particularly apply to those associations or their members.

**33-156. Strikes and lockouts.**

(a) An **employee or employee organization** must not either directly or indirectly cause, instigate, encourage, condone, or engage in any strike, nor the employer any lockout. An employee or employee

**organization** must not obstruct, impede, or restrict, either directly or indirectly, any attempt to terminate a **strike**.

(b) The **employer** must not pay, reimburse, make whole, or otherwise compensate any **employee** for or during the period when that **employee** is directly or indirectly engaged in a **strike**. The **employer** must not compensate an **employee** who struck for wages or benefits lost during a **strike**.

(c) If an **employee** or **employee organization** violates this Section, and after adequate notice and a fair hearing the Labor Relations Administrator finds that the violations have occurred and that any or all of the following sanctions are necessary in the public interest, the **employer** may:

(1) discipline, or dismiss from employment, any **employee** who engaged in the conduct;

(2) terminate or suspend an **employee organization's** dues deduction privilege, if any; or

(3) revoke the certification of and disqualify the **employee organization** from participation in representation elections for a period up to a maximum of 2 years.

(d) This Article does not prohibit an **employer** or a certified **employee organization** from seeking any remedy available in a court with jurisdiction.

### **33-157. Effect of prior laws and regulations.**

(a) This Article does not supersede any law, executive order, rule, or regulation adopted by the County or any County department or agency which is not inconsistent with this Article.

(b) Any executive order, rule, or regulation of the County or any County department or agency which regulates any subject that is bargainable under this Article is not superseded or modified by a collective bargaining agreement negotiated under this Article except to the extent that the application of the order, rule, or regulation is inconsistent with the collective bargaining agreement.

(c) However, if the inconsistent order, rule, or regulation is subject to and has received County Council approval, a collective bargaining agreement does not supersede or modify it unless:

(1) the order, rule, or regulation was expressly identified to the Council by the parties before the Council reviewed the collective bargaining agreement, as required by Section 33-153(1); and

(2) the Council expressly indicates its intent to repeal or modify the order, rule, or regulation.

## **Sec. 2. Emergency Effective Date.**

The Council declares that an emergency exists and that this legislation is necessary for the immediate protection of the public health and safety. This act takes effect on the date on which it becomes law.

*Approved:*

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Gail H. Ewing, President, County Council

Date



684 *Approved:*

685

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Douglas M. Duncan, County Executive

Date

686 *This is a correct copy of Council action.*

687

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Mary A. Edgar, CMC, Acting Secretary of the Council

Date

## LEGISLATIVE REQUEST

### Emergency Bill 21-96

#### Fire and Rescue Collective Bargaining

##### DESCRIPTION:

At present, the provisions of Chapter 33, Article VII, "County Collective Bargaining" cover the Fire/Rescue bargaining unit along with the Office, Professional and Technical and Service and Labor and Trades bargaining units. This bill amends Article VII, Sections 33-102 and 33-105, and adds Article X to establish a separate collective bargaining framework for nonsupervisory professional fire and rescue employees. Article X provides for the selection of a separate Labor Relations Administrator for the Fire/Rescue unit and allows binding arbitration of bargaining disputes.

1. Section 33-102 is amended by exempting from the definition of "employee" persons who work for the Department of Fire and Rescue Services and who are represented by a certified employee organization under Article X. In Section 33-105, references to the Fire/Rescue bargaining unit are deleted. The bargaining unit is now defined in Section 33-148.
2. Article X includes Sections 147 through Section 33-157, as described below:
  - (a) Section 147 is a statement of public policy in support of collective bargaining rights for fire and rescue employees;
  - (b) Section 33-148 defines terms;
  - (c) Section 33-149 delineates the authority and responsibilities of the Labor Relations Administrator who will be responsible for the implementation and administration of the program;
  - (d) Section 33-150 describes the collective bargaining rights accorded to Fire/Rescue unit employees and their certified representative;
  - (e) Section 33-151 provides the methods by which a certified representative may be selected, certified, or decertified;
  - (f) Section 33-152 describes the scope of bargaining by listing those matters which are mandatory subjects for bargaining between the County and the certified representative, and also includes a list of reserved management rights;
  - (g) Section 33-153 includes mandatory provisions about the bargaining process, including selection of the arbitrator who will act as the impasse neutral, impasse proceedings, submission of the final agreement to the Council, and the role of the Council with regard to the agreement;
  - (h) Section 33-154 describes what constitutes a prohibited practice on the part of the employer and an employee organization;

- (i) Section 33-155 states that the expression of views do not constitute a prohibited practice and that the certification of an employee organization does not preclude the County from discussing with members of religious, social professional or fraternal organizations matters which affect their members;
- (j) Section 33-156 prohibits strikes and lockouts and describes how the employer may deal with them; and
- (k) Section 33-157 describes the effect of the Article on prior laws, executive orders, rules or regulations of the County or any of its departments or agencies.

#### PROBLEM:

The Charter amendment adopted by the voters on November 3, 1994 states that the Council shall provide by law for collective bargaining with binding arbitration with an authorized representative of the Montgomery County career fire fighters. The certified representative of the firefighters, IAFF Local 1664, opposes legislation which would implement the Charter amendment by merely amending the County collective bargaining law. Instead, Local 1664 favors a separate collective bargaining law for firefighters in recognition of their unique interests. There is precedence for this in the existence of a separate collective bargaining law for police officers in Article V.

#### GOALS AND OBJECTIVES:

The objective of this legislation is to establish a separate collective bargaining law for the Fire/Rescue unit which provides for binding arbitration of bargaining impasses, and thereby implements the Charter amendment. It is also our goal to improve upon the impasse resolution procedure contained in the police labor relations law by including explicit language in Section 33-153 which prohibits either party from changing any bargaining proposal after it is submitted to the impasse neutral, except to withdraw a proposal on which the parties have reached agreement. The absence of such language caused problems in the past during impasse proceedings with the FOP. Except for the inclusion of provisions for arbitration of bargaining impasses, the remainder of the bill mirrors the language in the County collective bargaining law rather than the police labor relations law.

#### COORDINATION:

The Office of Human Resources has coordinated the drafting of this bill with the Department of Fire and Rescue Services and IAFF Local 1664, and will coordinate the implementation with the same parties.

#### FISCAL IMPACT:

Section 33-149 provides for the selection of a Labor Relations Administrator (LRA) who may periodically adopt, amend, and rescind regulations to implement and administer the Article. If the LRA adopts regulations, there will be a cost to the County for the time spent by the LRA performing this function. Additionally, if the parties cannot reach agreement, the County

will have to pay for the services of an impasse neutral to resolve impasses through binding arbitration. This would not be an additional cost, however, as the cost of such services is roughly the same as the costs of resolving bargaining impasses without binding arbitration.

ECONOMIC IMPACT:

Not applicable.

EVALUATION:

This legislation does not require evaluation.

EXPERIENCE ELSEWHERE:

Not applicable.

SOURCE OF INFORMATION:

James Torgesen, Labor/Employee Relations Manager.

APPLICATION WITHIN  
MUNICIPALITIES:

Not applicable.

PENALTIES:

Not applicable.

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B-11



OFFICE OF THE COUNTY EXECUTIVE  
ROCKVILLE, MARYLAND 20850

Douglas M. Duncan  
County Executive



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MEMORANDUM

March 15, 1996

Disk to Christy

TO: Gail Ewing, President  
Montgomery County Council

FROM: Douglas M. Duncan, County Executive

SUBJECT: Emergency Bill on Fire and Rescue Collective Bargaining

06 MAR 18 P 2:25

RECEIVED

I am submitting the attached emergency bill for the Council's consideration. If enacted, the bill will implement the Charter amendment adopted by the voters on November 8, 1994, by providing by law for binding arbitration of bargaining impasses with the certified representative of career fire fighters. It will also add a new article to Chapter 33 of the Code to provide a separate collective bargaining framework for professional fire and rescue employees. The Montgomery County Career Fire Fighters Association, IAFF Local 1664, was consulted in drafting the legislation.

I believe that a separate collective bargaining law is appropriate because collective bargaining for the Fire/Rescue bargaining unit is a hybrid of the features that are contained in the other two collective bargaining laws. The scope of bargaining for these employees is the same as the scope of bargaining for the OPT and SLT bargaining units under the County collective bargaining law in Article VII of Chapter 33. However, the impasse resolution procedures which provide for binding arbitration are more akin to those in the Police labor relations law in Article V, but include new language to improve the process. Also, the creation of a separate law will allow the appointment of a Labor Relations Administrator solely for this bargaining unit. The individual appointed to this position, because he or she will be concerned solely with the administration of the law for this unit, will become expert at dealing with the issues which are peculiar to this unit and which arise from the employees' working conditions and the Department's operations.

DD:cmr

Attachments

33



OFFICE OF HUMAN RESOURCES

Douglas M. Duncan  
County Executive

M E M O R A N D U M

June 14, 1996

TO: Michael E. Faden, Legislative Counsel

FROM: James Torgesen, Labor/Employee Relations Manager *JTF*

~~John~~ Sparks, President, Montgomery County Career Fire Fighters Association, IAFF Local 1664

SUBJECT: Proposed Revisions to Emergency Bill No. 21-96, Collective Bargaining - Firefighters

After reviewing Bill No. 21-96, we propose that the bill be revised as discussed below. (Double brackets indicate deleted text, and double underlining indicates added text.)

1. Sec. 33-147, Declaration of policy, line 81:  
wages, hours, and other terms and conditions of employment, as authorized by Charter Section 510A, through a

Reason: Comparable language is in both of the other collective bargaining laws.

2. Sec. 33-148, Definitions, line 127:  
(B) in the classification of [[Fire/Rescue Sergeant]] Fire/Rescue Lieutenant or any equivalent

Reason: In July of 1996, the classification of Fire/Rescue Sergeant will be abolished, and all personnel in that classification will become Fire/Rescue Lieutenants.

3. Sec. 33-148, Definitions, lines 131-132:  
representation of employees in collective bargaining. [[The organization must not admit to membership any person other than fire and rescue service personnel.]]

Reason: Although comparable language is in the definition of "Employee Organization" in Sec. 33-76 of Article V, Police Labor Relations, the language is probably unconstitutional, as it restricts freedom of association. In fact, IAFF Local 1664 has associate members and honorary members who are not current fire and rescue personnel, as well as members who are retired from the profession.

4. Sec. 33-149, Labor Relations Administrator, lines 164-165:  
decertification procedures[[,]] and prohibited practices[[, and the choice of an impasse neutral]].

Reason: The deleted language conflicts with Sec. 33-153(d), which states that the employer and certified representative must choose the impasse neutral. The LRA has no role in the selection.

5. Sec. 33-153, Bargaining, impasse, and legislative procedures, line 509:

position in any ensuing impasse procedure. The parties must meet as promptly as possible and attempt to negotiate an agreement acceptable to the Council. Either party may initiate impasse proceedings as set forth in this Section. The parties must submit

Reason: The added language above gives more detail about the duties of the parties in the face of Council rejection of all or part of the agreement. It is comparable to language in Sec. 33-80(g) of the Police labor law.

6. Sec. 33-154, Prohibited practices, line 609:

[[action which allegedly]] alleged prohibited practice which occurred more than 6 months before the

Reason: This is the language used in the other County collective bargaining laws, and is more exact than the use of the broader term "actions". A prohibited practice may encompass a series of acts or actions occurring over a period of time. The prohibited practice would be said to occur on the date of the last action.

7. Sec. 33-157, Effect of prior laws and regulations, line 675:  
153(1); [[and]] or

Reason: If the parties expressly identified to the Council an order, rule or regulation which is inconsistent with the proposed collective bargaining agreement, there is no requirement that the Council repeal or modify the order, rule or regulation. For example, if a proposed collective bargaining agreement contains a provision which is inconsistent with the Personnel Regulations, and the Council is notified of the inconsistency, Council approval of the agreement simply means that the agreement becomes the relevant regulation for bargaining unit employees. Other employees are still covered by the Personnel Regulations, and the Personnel Regulations themselves are neither repealed nor modified. Sec. 33-112 of the County collective bargaining law, which is comparable to this Section, contains the word "or".

If you have any questions concerning any of these issues, please contact either of us. James Torgesen may be reached at 217-2287, and John Sparks at 762-6611.

cc: Deborah Snead, Asst. Chief Administrative Officer  
Marta Perez, Director, Office of Human Resources  
Jon Grover, Director, Dept. of Fire & Rescue Services



LOCAL 1664

# Montgomery County Career Fire Fighters Ass'n., Inc.

# 4/2

TESTIMONY BY JOHN J. SPARKS, PRESIDENT, LOCAL 1664  
COLLECTIVE BARGAINING - FIRE FIGHTERS  
PUBLIC HEARING - EMERGENCY BILL 21-96  
JULY 2, 1996

Madam President, Council Members - my name is John Sparks and I am President of the Montgomery County Career Fire Fighters Assn. I represent over 600 career fire fighters and paramedics who are affected by this legislation.

As you are aware, in 1994, the citizens of Montgomery County voted favorably in a referendum which instructed the County Council to provide binding arbitration to cover career fire fighters and paramedics in the bargaining unit. For the past several months, we have been working with the County Executive in developing legislation that is fair to the County Government and our Association and meets the electoral mandate of the citizens of Montgomery County. While this legislation does create a separate law for us, we feel it is necessary not only because of the uniqueness of our work but because this legislation combines some of the Police law and some of the current Collective Bargaining Law which now pertains to us.

Additionally, important to the County Council is that this legislation does not broaden our negotiable subjects nor does it restrict or change any of the many current management rights.

As always, our Local asks only to be treated equitably and fairly in comparison to other County public safety bargaining unit employees. We believe this legislation brings us closer to that goal and we ask the Council to approve this legislation with the agreed upon amendments.

Thank you, and I will be happy to answer any questions which you may have.

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